IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 25TH JULY 2006 / 3RD SRAVANA 1928

TRC.No. 3 of 2003()
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TA.162/2002 of KERALA STAT, ADDL. BENCH, EKM.
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PETITIONER: REVISION PETITIONER: APPELLANT/ASSESSEE:
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M/S.KAVANAL ENGINEERING CO. (P) LTD.,
REPRESENTED BY THE MANAGING DIRECTOR,
KAVANAL ENGINEERING CO. (P) LTD.,
ATLANTIS JUNCTION, ERNAKULAM, KOCHI-15.

BY ADV. SRI.T.K.MARTHANDAN UNNITHAN
SRI.V.JAYAKUMAR
SRI.K.P.UNNIKRISHNAN

RESPONDENTS: RESPONDENT/REVENUE:
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STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY,
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI. GEORGEKUTTY MATHEW

THIS TAX REVISION CASE HAVING BEEN FINALLY HEARD ON 25/07/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR &
K.M.JOSEPH, JJ.

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T.R.C. NO. 3 OF 2003

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Dated this the 25th day of July, 2006

JUDGMENT

**Ramachandran Nair,J.**

Heard counsel for the petitioner and Government Pleader. The question raised is whether the estimation of turnover by the Tribunal at 10 times the actual suppression noticed is justified or not. Even though on the face of it, the question is purely one of fact, we find peculiar facts exist for interference with the Tribunal's order on the quantum of addition. Petitioner is engaged in assembling and installation of generators. The business itself was admittedly commenced on 1.9.1998. However, petitioner is found to have raised an invoice for a transaction on 13.11.1998 with the number of invoice as 1858. The department took that petitioner has made 1858 sales in the course of less than two and a half months and therefore estimated the turnover based on the invoice number. Petitioner's case is that invoice number is artificially shown to create an impression among customers. According to the petitioner, the magnitude of sale reflected in the invoice number

could not be physically carried on by the petitioner. On going through the orders we find that department could not trace any unaccounted sales made prior to detected sale. The Tribunal in principle did not accept the method of estimation made by the assessing officer and confirmed in appeal. Therefore they have reduced the addition by directing estimation at 10 times the actual suppression noticed. It is seen that since assessment was completed under Section 17(4) of the Act, petitioner is called upon to pay penalty under Section 17(5A) at three times the actual liability. In the circumstance, and since business itself was commenced on 1.9.1998 and detection was noticed on 13.11.1998, we modify the order of the Tribunal by reducing the addition to six times the actual suppression noticed instead of 10 times the actual suppression sustained by the Tribunal.

TRC is disposed of as above.

(C.N.RAMACHANDRAN NAIR)
Judge

(K.M.JOSEPH)
Judge